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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,433	08/18/2001	Murali Chaparala	ONX-115A/DIV	3797
27652	7590	12/24/2003	EXAMINER	
JOSHUA D. ISENBERG 204 CASTRO LANE FREMONT, CA 94539			KEANEY, ELIZABETH MARIE	
			ART UNIT	PAPER NUMBER
			2882	

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/932,433	CHAPARALA ET AL.
	Examiner	Art Unit
	Elizabeth Gemmell	2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 September 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 32-37 is/are allowed.
- 6) Claim(s) 26-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 August 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of remarks filed 30 September 2003.

Terminal Disclaimer

The terminal disclaimer filed on 30 September 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 09/834,744 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(f) he did not himself invent the subject matter sought to be patented.

Claims 26-36 remain rejected under 35 U.S.C. 102(e) as being anticipated by Wood et al.

Re claim 26: Wood et al. discloses a method for operating a MEMS device having a flap that is movable with respect to a base, the method comprising: applying a

pre-bias force to the flap to move the flap at least partially out of contact with an underlying base (column 8, lines 45+).

Re claim 27, 28 and 30: Wood et al. discloses a force which produces a biasing torque on the flap (column 2, lines 35+).

Since the systems in claims 27, 28 and 30 are identical, the forces are the identical, therefore it is inherent that the force reduces stiction, improves reliability and increases switch reliability, therefore no patentable weight is given to these limitations.

Re claim 29: Wood et al. discloses, in figure 4b and throughout the disclosure, the force is applied by a biasing element including a magnetic material (40).

Re claim 31: Wood et al. discloses the biasing torque counteracting another torque exerted on the flap (column 8, lines 50+).

Response to Arguments

Applicant's arguments filed 30 September 2003 have been fully considered but they are not persuasive.

The applicant argues that Wood fails to teach the pre-bias force being separate and apart from the actuation force.

The examiner respectfully points out that the instant claims fail to disclose two forces, a pre-bias force and an actuation force. Although, Wood may not teach a pre-bias force separate from the actuation force, Wood does indeed teach a pre-bias force

capable of moving the flap at least partially out of contact with the underlying base (as shown above).

Allowable Subject Matter

Claims 32-37 are allowable over the prior art.

The following is a statement of reasons for the indication of allowable subject matter: The best prior art of record discloses a microelectromechanical apparatus comprising a flap movable out of the plane of the base. However, the best prior art of record fails to teach or fairly suggest when the flap is moved out of the base, the flap is in contact with one of the sidewalls of the base as claimed in claim 32. Claims 33-37 are allowable by virtue of their dependency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gemmell whose telephone number is (703) 305-1937. The examiner can normally be reached on Monday-Thursday 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (703) 308-4858. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.


emg



DAVID V. BRUCE
PRIMARY EXAMINER